

## DETAILED ACTION

### *Specification*

The applicant is missing the following headings from the specification:

#### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(c).

- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the teeth on the upper edge (claim 3) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 8, 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said lower support surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the fourth wall" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said interchangeable plates" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "one interchangeable plate" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "said fourth vertical wall" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-17 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by McCleary (USPN 5807022).**

McCleary teaches a spreading device comprising a housing that is open on its lower face. There is a first (120), a second (118b) and a third (118a) vertical wall. The second and third

walls are opposite each other and have an upper and lower edge. The housing comprises at least one handle (40) and teeth (figure 21b) on a lower edge of the first vertical wall. The first vertical wall has an adjustable length (115, 116, 117) provided in order to adapt to a tile dimension.

With regards to claim 2, there is a fourth vertical wall (122).

With regards to claim 3, one of the vertical walls comprise teeth on the upper edge (they are reversible blades with teeth on both edges; col. 8, lines 33-36).

With regards to claim 4, there is a u-shaped component (138) comprising an upper openings and a lower support surface. The u-shaped component is to be disposed on the lower edge of the second and third vertical walls of the housing.

With regards to claim 5, the second and third walls have a protuberance (138) that is folded upward to form a lower support surface.

With regards to claim 6, the lower support surface of the second and third walls are lower than the lower edge of the first and fourth wall.

With regards to claim 7, the teeth are on an edge of an interchangeable plate (130b) that can be fixed to the vertical wall (120a).

With regards to claim 8, the interchangeable plates (130b) have an adjustable length when they are fit together with 12.

With regards to claim 9, the teeth are integral with the edge of the vertical wall (130a).

With regards to claim 10, the teeth have a height or spacing or width that is different from one interchangeable plate to another (plates have different teeth shapes; col. 8, lines 33-61).

With regards to claim 11, the fourth wall comprises a handle (top surface of wall can be held by a hand and therefore is considered a handle).

With regards to claim 12, two vertical walls comprise an identical handle (eyelets for handle 40) on the external face.

With regards to claim 13, the handle is adjustable in length (handle is made from rope and therefore can be shortened).

With regards to claim 14, the handle connects to the upper edges of the second and third walls.

With regards to claim 15, there is a second handle (115), adjustable in length and connects to the upper edges of the second and third walls.

With regards to claim 16, there is a bar (115) which has the shape associated with the handle that is adjustable.

With regards to claim 17, the bar is telescopic.

With regards to claim 23, there is a counterweight (figure 6 and 7) disposed on the upper region of the vertical walls.

**Claims 1, 2, 9, 11-12, 14, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Southby (USPN 6308370).**

Southby teaches a spreading device comprising a housing that is open on its lower face. There is a first (2'), a second (12') and a third (14') vertical wall. The second and third walls are opposite each other and have an upper and lower edge. The housing comprises at least one handle (8', 12, 10, 50) and teeth (4) on a lower edge of the first vertical wall. The first vertical wall has an adjustable length (figure 3) provided in order to adapt to a tile dimension.

With regards to claim 2, there is a fourth vertical wall (figure 3 shows two vertical walls with reference number 2'--one is the first vertical wall and the other is the fourth vertical wall).

With regards to claim 9, the teeth are integral with the edge of the vertical wall.

With regards to claim 11, the fourth wall comprises a handle (50, 10).

With regards to claim 12, two vertical walls comprise an identical handle (8', 12'; figure 4) on the external face.

With regards to claim 14, the handle connects to the upper edges of the second and third walls.

With regards to claim 24, the device is manufactured from steel (col. 3, lines 1-5).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary (USPN 5807022) or Southby (USPN 6308370).**

McCleary and Southby teach all the essential elements of the claimed invention however fail to teach the height and width of the teeth (claim 18), the spacing of the teeth (claim 19) and

the length of the vertical walls (claim 20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the claimed invention so that the teeth have a width, height and spacing as claimed as well as the walls having a length within the range as claimed since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions would not perform differently than the prior art device and therefore, the claimed device is not patentably distinct. Further, the claimed dimensions for the teeth and walls is clearly known to one of skill in the art since both the claimed device and the prior art device are used for the same purpose. Therefore, using the claimed sizes would not provide unexpected results.

**Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary (USPN 5807022) in view of Rose (USPN 5231729).**

McCleary teaches all the essential elements of the claimed invention however fails to teach a masking plate to mask the teeth (claim 21) or a panel which slides vertically to vary the height of the teeth (claim 22). Rose teaches a tiling trowel with teeth (figure 1) and a mask or panel (5). The mask/panel is used to mask the teeth (figure 2) or to vary the height of the teeth (figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of McCleary so that it comprises a mask/panel as taught by Rose to allow the device to get the exact depth and size of the teeth necessary for each individual job without needing to have a plurality of plates with different sized teeth.

**Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary (USPN 5807022) in view of Southby (USPN 6308370).**



McCleary teaches all the essential element of the claimed invention however fails to teach using stainless steel for the walls of the device. Southby teaches an adhesive spreading device that is made from sheets of steel (col. 3, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material of McCleary so that it is made from stainless steel as taught by Southby since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin, 125 USPQ 416.*

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shay L Karls/  
Primary Examiner, Art Unit 3723